

United States
Court of Appeals
for the Ninth Circuit

RICHARD C. LAMKIN and ANTHONY B.
SILVIA, Appellants,
vs.

BROWN AND ROOT, INC., PACIFIC BRIDGE
COMPANY, INC., MAXON CONSTRUCTION
COMPANY, INC., UTAH CONSTRUCTION
COMPANY, INC., and SWINERTON AND
WALLBERG, a co-partnership, Joint
Adventurers doing business under the
name of Brown-Pacific-Maxon, Appellees.

Transcript of Record

Appeal from the District Court of Guam, Territory of Guam

FILED

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No. 14772

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the District Court, Territory of Guam,
Marianas Islands

Civil No. 65-54

RICHARD C. LAMKIN and ANTHONY B.
SILVIA, on Behalf of Themselves and Others
Similarly Situated, Plaintiffs,

vs.

BROWN AND ROOT, INC., PACIFIC BRIDGE
COMPANY, INC., MAXON CONSTRUCTION
COMPANY, INC., UTAH CONSTRUCTION
COMPANY, INC., and SWINERTON & WALLBERG, a co-partnership,
Joint Adventurers Doing Business Under the
Name of Brown Pacific Maxon, Defendants.

COMPLAINT

Plaintiff Lamkin is a citizen of the State of Colorado and plaintiff Silvia is a citizen of the State of California, both temporarily employed within the unincorporated territory of Guam by defendants. Defendants are joint adventurers engaged in military construction work within the territory of Guam under contract to the military forces of the United States of America. This is a suit of a civil nature and is brought for the purpose of enjoining the defendants from obeying certain orders, directives and levies issued by employees, agents, servants and attorneys of the Government of Guam under claim of right and alleged color of law claimed to exist under the laws of the United States, particularly the Revenue Act of 1939 as

Amended, the Revenue Act of 1954 and the Organic Act of Guam, Chapter 8A, Title 48, U.S.C.A. as hereinafter fully appears.

First Count

Plaintiff Richard C. Lamkin for his claim alleges:

1. That he is employed by defendants pursuant to a contract of employment executed at Ft. Collins, State of Colorado in the month of December, 1952, which contract is still in full force and effect. Pursuant to the terms of said contract defendants employed plaintiff as an assistant mechanical superintendent to work on their project in the unincorporated territory of Guam and that plaintiff has fulfilled and performed and continues to fulfill and perform all of his obligations under the terms of said contract.

2. That plaintiff's gross income under said contract is One Hundred Eighty Four Dollars (\$184.00) per week, from which sum certain authorized deductions are made pursuant to the terms of said contract, leaving plaintiff a net balance of One Hundred Forty Two Dollars Fifty Four Cents (\$142.54) per week, and pursuant to the terms of said contract the net weekly balance of \$142.54 is to be paid to plaintiff each and every week during the continuance of his performance of said contract.

3. That contrary to and in violation of the terms of said contract defendants breached said contract

by failing and refusing to pay to plaintiff the net balance of his wages for the weeks ending September 26, 1954, October 3, 1954, October 10, 1954 and October 17, 1954, being a total of Five Hundred Seventy Three Dollars Sixteen Cents (\$573.16); that on the 27th day of October, 1954 plaintiff was paid the sum of Sixty Eight Dollars Ninety Cents (\$68.90) by defendants' check No. 14191 drawn on the Bank of California National Association of San Francisco, California, leaving a balance of Five Hundred Four Dollars Twenty Six Cents (\$504.26) due and unpaid to plaintiff.

4. That prior to the time the defendants failed to pay to plaintiff his wages as set out above, plaintiff received through the United States mail numerous demands purporting to be assessments of an income tax from one Harry L. Mangerich, claiming to be Commissioner of Revenue and Taxation for the Government of Guam, said demands being for the sum of Four Hundred Eighty Seven Dollars Fifty One Cents (\$487.51) plus interest.

5. That the defendants claim to justify their violation of the terms of their contract with plaintiff by asserting that levies had been made by the said Harry L. Mangerich on behalf of the Government of Guam upon the wages of plaintiff for said income tax alleged to be due to the Government of Guam; that said defendants further claim that the said Harry L. Mangerich asserts as his authority for said levies Sections 3640, 3670, 3690 and 3692, purported to be contained in Chapter 36 of an In-

ternal Revenue Code not otherwise identified; that said defendants state that the said Harry L. Mangerich claims his authority stems from Section 31 of the Organic Act of Guam and that said Section 31 incorporates the Internal Revenue Code of the United States into said Organic Act of Guam; that by the construction of the said Harry L. Mangerich and others, officers of the Government of Guam have the right to interpret, construe, administer and enforce said Internal Revenue Code of the United States.

6. That the purported levy by the said Harry L. Mangerich is not authorized by the Revenue Act of 1939 As Amended or the Revenue Act of 1954 of the United States or by any other statute of the United States.

7. That plaintiff is not indebted to the Government of Guam and did not and has not authorized defendants to pay any sums of money to the said Harry L. Mangerich or the Government of Guam on his behalf; that defendants are indebted to plaintiff in the sum of Five Hundred Four Dollars Twenty Six Cents (\$504.26), which sum defendants refuse to pay by reason of said purported assessment and levy.

Second Count

Plaintiff Anthony B. Silvia for his claim alleges:

1. That he is employed by defendants pursuant to a contract of employment executed at San Francisco, State of California, in the month of November, 1948, which contract is still in full force and

effect. Pursuant to the terms of said contract defendants employed plaintiff in a supervisory capacity to work on their project in the unincorporated territory of Guam and that plaintiff has fulfilled and performed and continues to fulfill and perform all of his obligations under the terms of said contract.

2. That plaintiff's gross income under said contract is One Hundred Forty Six Dollars Sixty Five Cents (\$146.65) per week, from which sum certain authorized deductions are made pursuant to the terms of said contract, leaving plaintiff a net balance of One Hundred Nine Dollars Sixty Five Cents (\$109.65) per week, and pursuant to the terms of said contract the net weekly balance of One Hundred Nine Dollars Sixty Five Cents (\$109.65) is to be paid to plaintiff each and every week during the continuance of his performance of said contract.

3. That plaintiff is informed and believes and therefore alleges the fact to be that defendants will, on the 3rd day of November, 1954, in violation of the terms and provisions of said contract of employment, confiscate the sum of One Hundred Nine Dollars Sixty Five Cents (\$109.65), being the net balance due to plaintiff after deductions from his wages for the preceding week, and further, that defendants will, on the 10th day of November, 1954, confiscate the sum of One Hundred Nine Dollars Sixty Five Cents (\$109.65), and further, that on the 17th day of November, 1954, an undetermined sum

will be confiscated from the wages of plaintiff by defendants.

4. That plaintiff is informed and believes and therefore alleges the fact to be that the defendants intend to pay such sums so confiscated from his wages to one Harry L. Mangerich, an employee of the Government of Guam, by reason of purported assessments and levies made by the said Harry L. Mangerich and served upon defendants.

5. That plaintiff is not indebted to the Government of Guam or the said Harry L. Mangerich or to the defendants herein in any amount.

6. That plaintiff has no adequate remedy at law to prevent the total confiscation and dissipation of his wages as set forth above.

7. That unless the defendants are restrained and enjoined from performing the acts of confiscation hereinabove described, plaintiff will be deprived of the fruits of his labor without due process of law.

Third Count

Plaintiffs Richard C. Lamkin and Anthony B. Silvia, on behalf of themselves and others similarly situated, for a further claim allege:

1. That defendants have, since the 1st day of January, 1951 to the present time withheld various sums of money from the wages of plaintiffs and other employees of defendants; and further, upon information and belief plaintiffs allege the fact to be that defendants will withhold such sums in the

future, said withholding being in accordance with the withholding tables provided in Section 1622 (a)-(d), (g)-(k) of the United States Revenue Act of 1939 As Amended and Section 3402 of the United States Revenue Act of 1954, said withholding not having been authorized by plaintiffs.

2. That said withholding hereinabove described was and is contrary to the provisions of Section 1621 of the United States Revenue Act of 1939 As Amended and Section 3401 of the United States Revenue Act of 1954.

3. That said Sections 1621 and 3401 as above described cannot be construed to authorize withholding from employees of defendants within a possession of the United States.

4. That by reason of the wrongful acts of defendants herein set out, plaintiffs and others have had substantial sums of money unlawfully withheld from their wages and that in the future, further substantial and undetermined sums will continue to be withheld from their wages contrary to the express provisions of the statutes herein set out.

5. That due to the numerous employees of defendants herein who have been subjected to the wrongful and illegal withholding hereinabove described, a multiplicity of suits to protect and secure their rights would be required and that therefore plaintiffs herein and others have no adequate remedy at law.

Wherefore:

Plaintiff Richard C. Lamkin demands:

1. Judgment against defendants for Five Hun-

dred Four Dollars Twenty Six Cents (\$504.26), together with interest at the rate of 6% per annum from the 26th day of September, 1954.

2. That defendants be restrained and enjoined from further confiscation of plaintiff's wages.

3. That defendants be restrained and enjoined from further withholding from the wages of plaintiff and others, and that said defendants be required to account for and repay to plaintiff and others such sums withheld from their wages since the 1st day of January, 1951.

4. Such other and further relief as to the Court may seem proper.

Plaintiff Anthony B. Silvia demands:

1. That defendants be restrained and enjoined from confiscating his wages as threatened.

2. That defendants be restrained and enjoined from further withholding from the wages of plaintiff and others, and that said defendants be required to account for and repay to plaintiff and others such sums withheld from their wages since the 1st day of January, 1951.

3. Such other and further relief as to the Court may seem proper.

Dated: This 27th day of October, 1954.

/s/ FINTON J. PHELAN, JR.,

/s/ E. R. CRAIN,

Attorneys for Plaintiffs

[Endorsed]: Filed October 28, 1954.

[Title of District Court and Cause.]

STIPULATION

Subject to the approval of the Court, it is hereby stipulated by and between E. R. Crain and Finton J. Phelan, Jr., Attorney for the Plaintiffs, and H. G. Homme, Jr., United States Attorney, appearing Specially as Attorney for the Defendants, may have to and including the 19th day of January, 1955, within which to answer, move or otherwise plead to the complaint on file herein.

/s/ E. R. CRAIN,
/s/ FINTON J. PHELAN, JR.,
Attorneys for Plaintiffs,
UNITED STATES OF
AMERICA
/s/ H. G. HOMME, JR.,
United States Attorney,
Attorney for Defendants

Approved:

/s/ PAUL D. SHRIVER,
Judge of the District Court of
Guam

[Endorsed]: Filed November 19, 1954.

[Title of District Court and Cause.]

STIPULATION

Subject to the approval of the Court, it is hereby stipulated by and between counsel for the Plaintiff and counsel for the United States of America, De-

fendant, that Defendant, United States of America may have to and including February 18, 1955, within which to answer, move or otherwise plead to the complaint on file herein.

/s/ E. R. CRAIN,

/s/ FINTON J. PHELAN, JR.,

Attorneys for Plaintiffs

UNITED STATES OF

AMERICA

/s/ By H. G. HOMME, JR.,

United States Attorney

Approved:

/s/ PAUL D. SHRIVER,

Judge of the District Court of
Guam

[Endorsed]: Filed January 19, 1955.

[Title of District Court and Cause.]

MOTION—12 (b) (6) F.R.C.P.

The defendants Brown and Root, Inc., Pacific Bridge Company, Inc., Maxon Construction Company, Inc., Utah Construction Company, Inc., and Swinnerton and Wallberg, a co-partnership, joint adventurers doing business under the name of Brown Pacific Maxon move the Court as follows:

1. To dismiss the action because the complaint fails to state a claim against the defendants upon which relief can be granted.

2. To enter Summary Judgment for the defendants on the ground that the complaint and affidavit

attached herewith show that there is no material question of fact before the Court and that the defendants are entitled to judgment as a matter of law.

Dated this 17th day of February, 1955.

/s/ H. G. HOMME, JR.,

United States Attorney,

Attorney for Defendants

AFFIDAVIT

United States of America,
Territory of Guam—ss.

J. Russell Marshall, being first duly sworn on oath, deposes, says and makes this Affidavit in support of a Motion to Dismiss and for Summary Judgment in the above-entitled proceedings as follows:

1. That he is a citizen of the United States having attained the age of maturity; and that he is a proper person to make this Affidavit, and; that he is presently employed within the Territory of Guam, United States of America.

2. That ever since April 1, 1954, he has been continuously so employed by certain joint adventurers doing business under the name of "Brown Pacific Maxon" and composed of the following corporations and co-partnership, to wit: Brown and Root, Inc., a Texas corporation; Pacific Bridge Company, a Delaware corporation; Maxon Construction Company, Inc., an Ohio corporation; Utah Construction Company, a Utah corporation, and: Swinnerton and Wallberg, a co-partnership; that at

all times hereinafter Affiant shall refer to said joint adventurers as the "employer" for the sake and purpose of clarity.

3. That during all times referred to herein the employer has maintained administrative and construction offices on certain military reservations in the Territory of Guam.

4. That Affiant is titled the "Project Manager" for the employer and as such is the due and lawful official authorized by and in charge of the management of the affairs of the employer within the Territory of Guam and that, therefore, Affiant has knowledge of the affairs of the employer.

5. That the sole, singular and exclusive activity of the employer within the Territory of Guam is the construction of military installations upon military reservations pursuant to a certain cost-plus-fixed-fee contract between the employer and the Department of the Navy and that such contract is the causa sine qua non of employer's existence.

6. That pursuant to the provisions of said contract the employer acquires all materials and labor necessary to such construction as purchasing and contracting agent for the Department of the Navy, at no time acquiring anything in its own name, title or behalf and, therefore, solely and exclusively performing an administrative service in these constructions activities on behalf of the Government of the United States.

7. That of thousands of persons employed for the purposes aforesaid, the employer on the 17th day of September, 1952, at Denver, Colorado, em-

ployed one Richard C. Lamkin, by then and there entering into the written contract of employment hereto attached as Exhibit "A" and that on the 24th day of January, 1953, the employer entered into a written modification of this original contract of employment with Richard C. Lamkin, a copy of which is hereto attached as Exhibit "B".

8. That pursuant to the provisions of the supplemental agreement the employer agreed to pay Richard C. Lamkin the minimum sum of Six Hundred Seventy-five (\$675.00) Dollars per month in monthly installments and has continuously thereafter so done.

9. That at all times during the aforesaid employment of Richard C. Lamkin the employer has regularly deducted income tax withholdings as provided by the United States Internal Revenue Codes and Regulations and has paid such sums withheld over to the Treasurer of the Government of Guam. A copy of "Employees' Withholding Exemption Certificate" executed by Richard C. Lamkin, dated November 20, 1952, is hereto attached as Exhibit "C".

10. That the employer has followed a like procedure covering Guam earnings in the instance of all other employees employed on Guam under the same or similar conditions.

11. That on the 1st day of September, 1950, the employer entered into a similar written contract of employment with one Anthony B. Silvia, a copy of which contract is attached as Exhibit "D", and that pursuant to such contract the employer has regu-

larly paid wages to Anthony B. Silvia and therefore has made regular deductions for income withholdings in the manner aforesaid. A copy of "Employees Withholding Exemption Certificate" executed by Anthony B. Silvia, dated December 15, 1950, is hereto attached as Exhibit "E".

12. That on the 30th day of September, 1954, employer was served with ninety-eight (98) Warrants for Distrainment and Levies by the Commissioner of Revenue and Taxation for the Government of Guam contending that ninety-eight (98) of employer's employees were indebted to the Government of Guam in various amounts by reason of their failure to pay certain income taxes to such Government.

13. That accordingly and on the 30th day of September, 1954, a Warrant for Distrainment and Levy covering the wages of Richard C. Lamkin was served upon the employer setting forth in the Warrant for Distrainment that Richard C. Lamkin was indebted to the Government of Guam for unpaid taxes in the sum of \$487.51 together with interest in the amount of \$15.84 making a total in all of \$503.35 and that pursuant thereto the employer distrained the sum of \$142.54 from wages then due and owing to Richard C. Lamkin. A copy of such Warrant for Distrainment and Levy is attached as Exhibit "F".

14. That on the 7th day of October, 1954, employer was served with a subsequent Levy by the Commissioner of Revenue and Taxation for the Government of Guam in the amount of \$361.22 and

pursuant to such Levy employer distrained the sum of \$145.54 from wages then due and owing the said Richard C. Lamkin. A copy of such Levy is attached as Exhibit "G".

15. That on the 14th day and the 22nd day of October, 1954, employer was served with two subsequent Levies in the amounts of \$215.93 each and pursuant to such Levies employer distrained the further sum of \$285.08 from wages due and owing Richard C. Lamkin. Copies of the foregoing Levies are attached as Exhibits "H" and "I" respectively.

16. That pursuant to the Warrant for Distrain and Levies above-described, employer has distrained the total sum of \$573.16 from the wages due and owing Richard C. Lamkin, from which sum employer has been authorized by the Commissioner of Revenue and Taxation for the Government of Guam to release the sum of \$68.90 and that therefore, employer has distrained and paid over to the Government of Guam the net sum of \$504.26 pursuant to the commands of said official and subsequent to the filing of this action.

17. That on the 18th day of November, 1954, being at a time subsequent to the filing of the instant action, employer was served with a Warrant for Distrain and Levy by the Commissioner of Revenue and Taxation for the Government of Guam setting forth that Anthony B. Silvia was indebted to the Government of Guam in the amount of \$213.06 for unpaid taxes and the amount of \$8.60 as interest making in all a total of \$221.66 and pursuant thereto the employer distrained the

sum of \$89.50 from wages then due and owing to Anthony B. Silvia. A copy of such Warrant for Distrainment and Levy is attached as Exhibit "J".

18. That on the 26th day of November, 1954, employer was served by a subsequent Levy by the Commissioner of Revenue and Taxation for the Government of Guam in the amount of \$132.31 and pursuant thereto employer distrained the sum of \$89.50 from the wages then due and owing Anthony B. Silvia. A copy of such Levy is attached as Exhibit "K".

19. That on the 2nd day of December, 1954, employer was again served with a Levy by the Commissioner of Revenue and Taxation for the Government of Guam in the amount of \$42.85 and pursuant thereto employer distrained the sum of \$42.85 from the wages then due and owing Anthony B. Silvia. A copy of such Levy is attached as Exhibit "L".

20. That pursuant to the Warrant for Distrainment and Levies above described the employer has distrained the total sum of \$221.85 from the wages of Anthony B. Silvia and has paid the said sum over to the Government of Guam pursuant to the commands of the official as aforesaid.

21. That pursuant to all other Warrants for Distrainment and Levies served upon the employer by the Commissioner of Revenue and Taxation for the Government of Guam, employer has distrained and paid over to the Government of Guam all sums the subject thereof.

22. That at all times aforesaid employer has been

advised and verily believes that its actions were lawful and in response to lawful authority and that it intends to continue to so act until such time as it shall be commanded by law to act otherwise.

23. That all Exhibits (being "A" through "L" inclusive) are true and exact copies of the original documents in the files of the employer.

Further Affiant sayeth not.

/s/ J. RUSSELL MARSHALL,
Project Manager, Brown Pacific
Maxon

Subscribed and sworn to before me this 11th day of February, 1955.

[Seal] /s/ ROLAND A GILLETTE,
Clerk of the District Court, Terri-
tory of Guam

EXHIBIT "A"

CONTRACT OF EMPLOYMENT (Hourly Employees - Manual)

Labor Contract No.....

Brown - Pacific - Maxon Guam Contractors NOy-13931, Contractors on U. S. Navy Contract NOy..., hereinafter called the Employer, employs the Employee named upon the following terms and conditions, to which the Employer and the Employee agree:

Name of Employee: Richard C. Lamkin.

Point of Hire: Denver, Colorado.

Exhibit "A"—(Continued)

Section 1. Assignment of Work:

(a) The position for which the Employee represents he is qualified and for which he is engaged is that of Machinist General Foreman, on Naval construction work at any of the islands or bases west of the 180th Meridian within or immediately adjacent to the Pacific Ocean Area, hereinafter called the Western Pacific Area.

(b) The place or places within the Western Pacific Area where the Employer may perform construction work is hereinafter called the site of the work. The Employee's initial assignment is at Guam, M. I., the location of the Employer's base of operations. However, if the Navy Department calls upon the Employer to perform work at any other points or places within the Western Pacific Area under the above Navy Contract or any other Navy cost-type contract which may be awarded subsequently to the Employer, this Employment Contract shall be fully applicable to all such work.

(c) With the written consent of the Employee, this agreement may be assigned to the United States or any of its agencies, or to any other Contractor engaged in the performance of a contract for the United States in said Western Pacific Area.

(d) The Contractor may require the Employee to render service in a classification of work other than that mentioned above, provided that the Employee's wage rate shall not be reduced below that provided in Section 3 of this agreement unless specifically agreed in writing between the Employer and the

Exhibit "A"—(Continued)

Employee in accordance with Section 13 of this agreement.

Section 2. Term of Agreement:

The term of this agreement shall be the period during which the Employer desires the services of the Employee in connection with Naval construction work in the Western Pacific Area (this period is hereinafter referred to as the "period of service"); provided, that at the time of completion of twelve (12) months of continuous service the Employee may terminate his employment hereunder; however, should the Employee continue his employment beyond twelve (12) months, the Employee may thereafter terminate his employment hereunder only by giving the Employer written notice specifying the date upon which he desires to terminate his employment, which date shall not be less than thirty (30) days after date of delivery of such notice to the Employer.

Section 3. Wages and Hours:

(a) Straight time compensation shall be at the rate of \$2.85* per hour. The Employee is guaranteed the opportunity to work a minimum of forty (40) hours each week, provided he is ready, willing and able to work.

(b) The Employee agrees to work such hours and shifts as may be required by the Employer. Any work performed in excess of eight (8) hours per day or in excess of forty (40) hours per week and

* Plus 10%.

Exhibit "A"—(Continued)

all work performed on designated holidays will be paid for at one and one-half times the straight time hourly rate. Designated holidays within the meaning of this contract shall be: New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Armistice Day, Thanksgiving Day and Christmas Day. Hours worked in excess of eight (8) hours in any one day shall not be used in computing the forty (40) hours per week for overtime purposes. Saturday and Sunday, as such, shall not be considered as overtime days. In computing the forty (40) hours per week for overtime purposes, hours within any scheduled work week for which the Employee is compensated as traveling time in accordance with paragraph 3(c) hereof shall be counted as hours worked.

(c) Compensation for traveling time will be paid while the Employee is en route on direction of the Employer from the point of hire to the site of the work, while en route on the return trip upon satisfactory completion of the period of service from the site of the work to the point of hire, and while awaiting transportation at the site of the work. Such travel time compensation shall be paid only for eight (8) hours in any twenty-four (24) hour period and for not more than the first forty (40) hours so computed in any seven (7) consecutive days, at the straight time rate. Travel pay shall not accrue during stopovers resulting from the Employee's voluntary action or disregard of the Employer's instructions, or during deviations made for

Exhibit "A"—(Continued)

the Employee's personal convenience. In the event a means of transportation other than that provided by the Employer is utilized by the Employee, compensation for traveling time will be computed on the basis of the most direct and rapid means of transportation available.

(d) The Employee will not be required to perform work within his trade or profession while traveling from point of hire to port of embarkation, while awaiting transportation at the port of embarkation, or upon the return trip while traveling from the port of debarkation to point of hire. The Employee may be called upon to perform minimum essential services incident to overseas travel from port of embarkation to the jobsite and on the return trip upon satisfactory completion of the period of service from the site of the work to the port of debarkation.

Section 4. Transportation and Traveling Expenses:

(a) Transportation: The Employer shall provide transportation from the point of hire to the site of the work, and upon satisfactory completion of the period of service, or upon impairment of health, as provided in Section 9(b) hereof, return to the point of hire. Transportation furnished by the Employer shall be by such method, class, schedule and route as the Employer may designate, except, however, that the Employer may approve variations in route or method of transportation for the convenience of the Employee, provided, however, that the total cost

Exhibit "A"—(Continued)

of transportation to the Employer shall not, in any event, exceed the cost of transportation which would have been incurred had the Employee been transported by the most direct and rapid means of travel available. If the Employer authorizes the Employee to furnish any part of his transportation, reimbursement will be made, within the limitations provided above, upon authorization by the Navy Officer in Charge of Construction and the presentation by the Employee of such evidence of expenditure as the Employer may require. The Employee agrees to accept transportation by such method, class, schedule and route as the Employer may designate. Failure on part of the Employee to utilize transportation as provided by or approved by the Employer will constitute release of the Employer from all further obligations for subsistence, transportation and travel pay.

(b) Subsistence En Route: The Employer will furnish subsistence without cost to the Employee, or in lieu thereof, the Employer will pay a subsistence allowance at the rate of six dollars (\$6.00) for each day during which the Employee is in travel status pursuant to Section 4(a). No subsistence allowance will be paid when subsistence is provided while traveling, or when subsistence and quarters are furnished during authorized stopovers, or during stopovers resulting from the Employee's voluntary action or disregard of the Employer's instructions. In computing subsistence allowance, days shall commence at midnight and for fractions of a

Exhibit "A"—(Continued)

day one-fourth ($\frac{1}{4}$) of the per diem allowance will be paid for each period of six (6) hours or fraction thereof. When quarters are furnished without meals, a subsistence allowance of five dollars (\$5.00) per day will be made.

(c) Baggage: Transportation of any personal baggage (exclusive of tools required by the Employer) in excess of the weight and size of that carried free by the carrier shall be paid by the Employee, unless written authorization to take excess personal baggage is given by the Employer.

Section 5. Jobsite Facilities:

Board, lodging, limited laundry service, medical services, and dental care of an emergency nature only, at the site of the work, will be furnished by the Employer at a charge not to exceed one dollar and fifty cents (\$1.50) per day. The Employee hereby authorizes the Employer to deduct all such charges, at the currently established rate, from any payment due the Employee hereunder.

Section 6. Medical Examinations:

The Employee, before departure, is to submit to the required physical examination and inoculations as designated by the Employer, and furnish the Employer, in duplicate, certificates of the examining physician and of the inoculations, it being expressly understood that satisfactory medical and inoculation certificates are conditions precedent to this employment. Provided, however, that the Employer may at its option, in the case of protracted series of inoculations, commence such series at the

Exhibit "A"—(Continued)

time of physical examination and conclude such series during the period of travel or upon arrival of the Employee at the site of the work. Such procedure shall not affect the requirement that satisfactory medical and inoculation certificates are a condition precedent to this employment. It is further understood that all statements made by the Employee in connection with said medical examination shall be deemed material to and a part of this contract and that any fraudulent misrepresentation or concealment of a material fact by the Employee in such statements shall relieve the Employer from any obligations under this contract. All approved or authorized incidental preliminary expenses, such as medical examination, inoculations, and photographs will be paid by the Employer.

Section 7. Compensation During Illness or Injury.

Compensation insurance benefits will be paid in accordance with the Longshoremen's and Harbor Workers' Compensation Act, as amended and extended by the Defense Base Act as the sole remedy for any injury or illness arising out of, or in the course of, employment under this agreement. However, if the Employee shall be unable to perform his duties under this contract by reason of injury or illness, and if such disability shall be determined to be compensable under the Act above-mentioned, then, upon such determination, the Employee shall be paid eight (8) hours for each regularly scheduled work day absent because of such

Exhibit "A"—(Continued)

disability during the first 7 day period up to a maximum of forty (40) hours. For the purpose of this section, any authorized holiday falling within such 7 day period will be regarded as a regularly scheduled work day. No other or further wages shall be paid to the Employee until he is able to and does resume the performance of his duties under this contract and the benefits under the said Act cease. If the Employee shall be unable to perform his duties by reason of a disability which is determined not to be compensable under said Act, then the Employee shall receive no pay from the date and time of disability until he is able to and does resume his duties under this contract.

Section 8. Employee's Reserve Fund:

(a) Beginning with the date the Employee leaves the port of embarkation the Employer shall withhold from each weekly payment due to the Employee an amount equal to one-third ($\frac{1}{3}$) of the Employee's gross weekly earnings or \$25.00, whichever figure is lower, until a reserve of \$350.00 shall have been set aside; provided, that if the Employee quits or is discharged, so as to become subject to the provisions of Section 9(c), then all monies due to the Employee at the time of such quitting or discharge shall be added to and become a part of said reserve.

(b) This reserve fund shall be retained during the Employee's entire period of service. Any monies owed by the Employee to the Employer at the time of termination of employment shall be chargeable

Exhibit "A"—(Continued)

to and collected from this reserve fund. Any part of the reserve fund not used as provided herein or as provided elsewhere in the contract shall be paid to the Employee immediately upon determination of the amount not so used or within thirty (30) days after the Employee leaves the Western Pacific Area, whichever period is shorter.

Section 9. Termination of Employment:

(a) If the Employee terminates his employment in accordance with the provisions of Section 2, then compensation for traveling time will be paid in accordance with Section 3(c) and transportation and travel expenses will be provided in accordance with Section 4.

(b) Should the health of the Employee become so impaired, through no fault of his own, during the period of service under this contract as to justify the Employer, in its opinion based upon such medical examination as the Employer and/or the Navy Department may demand, to repatriate the Employee, the Employee will be repatriated at the Employer's expense, as herein provided: The Employee's wages shall cease as of the time he is determined to be incapacitated; transportation and traveling expenses will be provided in accordance with Section 4; medical care during repatriation of the Employee as may be found necessary by such medical examinations as the Employer and/or the Navy Department may demand, will be provided at no cost to the Employee until he arrives at the

Exhibit "A"—(Continued)

point of hire or until he is delivered, for medical reasons, into the custody of legally responsible authorities, at which time all obligations of the Employer hereunder shall cease. The same conditions and provisions shall apply with reference to injuries arising out of and in the course of employment. The foregoing provisions shall not affect any rights which the Employee may have to compensation insurance under Section 7.

(c) If, prior to the completion of twelve (12) months of service hereunder, the Employee quits, or is discharged for cause, the employment shall terminate and all compensation and travel allowance shall cease as of the time of quitting or discharge, and the Employee thereafter shall be liable for and will pay or shall have deducted from his reserve fund his cost of living, including board, lodging, laundry, medical services and dental care, and his own return transportation cost and expenses. Termination for cause shall include but not be limited to the following: Lack of ability of the Employee to perform the work of the classification for which he is hired; carelessness or negligence of duties; insubordination; incompetence; failure or refusal to work; dishonesty; bad temper; failure to travel as scheduled by the Employer; the immoderate use of alcoholic drinks; the use of narcotics; any misrepresentation or concealment of material fact made for the purpose of securing this contract; failure to comply with the provisions of Section 10(c) of this contract; or any other act of misconduct; or upon

Exhibit "A"—(Continued)

request by the Navy Officer-in-Charge of Construction at the site of the work.

Section 10. Working Conditions:

(a) The Employee understands that other workers in his trade or other trades may be employed on the work to be done at the site of the work and that these men may be either union or non-union; and the Employee agrees that the employment of such men will not be used as a reason for failure to carry out this contract.

(b) The Employee understands that the various sites of the work are under the supervision of military authority. The Employee agrees that any act by the Employer inconsistent with the provisions hereof and any omission by the Employer to perform any of its obligations hereunder, shall be excused if such acts or omissions shall result from compliance by the Employer with any order or regulation of such military authority. The period of employment shall not be extended as a result of the interruption of the performance of this contract by reason of such orders or regulations, and the guaranteed opportunity to work for forty (40) hours per week while at the jobsite, as hereinabove provided, shall not be suspended.

(c) The Employee shall comply with all laws and regulations, both civil and military, applicable at the site of the work and the vicinity thereof, and such other rules and regulations as the Navy Officer-in-Charge of Construction and the Contractor

Exhibit "A"—(Continued)

may establish from time to time with respect to personnel employed. The Employee agrees to conduct himself at all times in an orderly manner with due regard for the convenience of his co-workers, and to conform to reasonable standards of personal cleanliness.

Section 11. Claims:

Any claims arising out of this contract or the employment under this contract, except claims of workmen's compensation as provided in Section 7 hereof, shall be submitted by the Employee by written notice to the Employer and to the Navy Officer-in-Charge of Construction at the site of the work. Such written notice shall set forth in detail the nature of the claim and the amount claimed by the Employee. Such written notice shall be given prior to the departure of the Employee from the site of the work. The giving of such written notice in the manner and at the time herein provided shall be a condition precedent to any right of action on any claim arising out of employment under this contract and any such right of action shall be limited to the matters set forth in said written notice. The Employer will furnish the Employee with an appropriate form on which such written notice may be given.

Section 12. Emergency Notification:

(a) In the event of emergency, accident or death, the Employer may notify: Esther Marie Lamkin, wife, at Station 1, Apt. 64, Agana, Guam. The

Exhibit "A"—(Continued)

above address may be considered as the Employee's permanent address, or the address of the person in whose care the Employer may communicate concerning this contract or other matters, if it is unable to communicate with the Employee.

(b) In the event of the death of the Employee while outside the continental limits of the United States during the period of service under this contract, the Employee authorizes the Employer to make appropriate disposition, as is deemed best by it under the prevailing circumstances, of the body and personal effects of the Employee. If so requested by the next of kin and approved by the Navy Officer-in-Charge of Construction, the body of the deceased Employee may be returned to the Employee's original point of hire at the Employer's expense.

Section 13. Certification by Employee:

The Employee hereby certifies that he has read the foregoing agreement and that he fully understands its terms and conditions; and the Employee further certifies that the foregoing terms and conditions constitute his entire agreement with the Employer and that no promises or understandings have been made other than those stated above; and it is specifically agreed that this agreement shall be subject to modification only by written instrument signed by both the employee and the employer.

Executed at Denver, Colorado, in quintuplet this 17th September, 52.

Exhibit "A"—(Continued)

—Effective date set forth in Modification of Contract Brown-Pacific-Maxon, Contract NOy-13931

Brown-Pacific-Maxon, Employer

Signed and Acknowledged in the presence of:
A. L. Roberson—As to the Employer.

/s/ Richard C. Lamkin, Employee

Signed and Acknowledged in the presence of:
Genevieve Eleman—As to the Employee.

EXHIBIT "B"

MODIFICATION OF CONTRACT OF
EMPLOYMENT

(To be used where "C" class employees are changed
to "A" class employees.)

Brown-Pacific-Maxon, contractors on U.S. Navy Contract NOy-13931, hereinafter called the employer, and Richard C. Lamkin, hereinafter called the employee, mutually agree to modification of Contract of Employment dated the 17th day of September, 1952, executed at Denver, Colorado.

Section 1. a. shall be modified to read: The position for which the employee represents he is qualified and for which he is engaged is that of Assistant Office Engineer, on Naval Construction work at any of the islands or bases west of the 180th Meridian within or immediately adjacent to the Pacific Ocean Area, hereinafter called the Western Pacific Area.

Exhibit "B"—(Continued)

Section 1. d. shall be modified to the effect that the wording "Section 13" on line six (6) shall be changed to read "Section 14".

Section 3. a. shall be modified to read: Compensation shall be at the rate of \$675.00 per month which shall constitute the entire compensation applicable for the entire period of service, unless otherwise agreed in writing between the Employer and the Employee. Such compensation shall begin on the 26th day of January, 1953, and shall cease on the date the Employee is returned to the point of hire, except as otherwise herein provided.

Section 3. b. shall be modified to read: The Employee agrees to work whatever hours are required for the performance of his work and position, it being understood that no overtime will be paid under any circumstances.

Section 3. c. shall be modified to read: Compensation for traveling time will be paid in accordance with Section 3. (a), except that travel pay shall not accrue during stopovers resulting from the Employee's voluntary action or disregard of the Employer's instructions, or during deviations made for the Employee's personal convenience. In the event a means of transportation other than that provided by the Employer is utilized by the Employee, compensation for traveling time will be computed on the basis of the most direct and rapid means of transportation available.

Section 4. a. shall be modified to the effect that

Exhibit "B"—(Continued)

transportation shall be provided as set forth in Section 10 (b).

Section 7. shall be modified to read: Compensation insurance benefits will be paid in accordance with the Longshoremen's and Harbor Worker's Compensation Act, as amended and extended by the Defense Base Act, as the sole remedy for any injury or illness arising out of, or in the course of, employment under this agreement. However, if the Employee shall be unable to perform his duties under this contract by reason of injury or illness, and if such disability shall be determined to be compensable under the Act, above-mentioned, then, upon such determination, the Employee shall be paid $1/26$ of the monthly rate for each regularly scheduled work day absent because of such disability during the first 7 day period up to a maximum of $6/26$ of the monthly rate. For the purpose of this section, any authorized holiday falling within such seven (7) day period will be regarded as a regularly scheduled work day. No other or further salary shall be paid to the Employee until he is able to and does resume the performance of his duties under this contract and the benefits under the said Act cease. If the Employee shall be unable to perform his duties by reason of a disability which is determined not to be compensable under said Act, then the Employee shall receive no pay from the date and time of disability until he is able to and does resume his duties under this contract.

Section 8. a. shall be modified to the effect that

Exhibit "B"—(Continued)

the wording, "Section 9 (c)" on line seven (7) shall be changed to read, "Section 10 (c)".

Section 9. shall be changed to read "Leave Privileges" instead of "Termination of Employment", and shall read: Employee hired in the Continental United States or the Territory of Hawaii and employed in the Western Pacific Area, shall accumulate leave at the rate of two (2) days per month up to a maximum accumulation of ninety (90) days, except that no leave shall be credited to the account of the Employee until he has either (1) performed six months of satisfactory service, under this contract, or (2) satisfactorily completed the period of service under this contract, or (3) been terminated because of impaired health, under the provisions of Section 10 (b), of this contract. Accumulation of leave will begin on the effective date of this Modification of Contract of Employment.

b. If, prior to the completion of twelve (12) months of service under this contract, the Employee quits or is discharged for cause, in accordance with Section 10 (c) below, all unused accrued leave will be forfeited.

c. Upon the completion of each year of service, under this contract, the Employee may elect either (1) to be paid for the value of the accumulated leave to his credit as of the end of such year, computed at the rate of compensation effective on the last day of that year, or (2) to continue to accumulate leave up to the maximum provided for in (a) above. Payment in cash for accumulated leave dur-

Exhibit B—(Continued)

ing the period of employment will be made only upon the approval of the Navy Officer-in-Charge of Construction.

Section 9. Termination of Employment, shall be changed to Section 10, and the wording in 10 (c) regarding provisions of Section 10 (c) shall be changed to read, "Section 11 (b)".

That the Contract of Employment between the parties hereto shall in all other respects remain in full force and effect in all of its provisions as provided therein.

Executed at Guam, M. I., this 24th day of Jan. 1953.

Brown-Pacific-Maxon

/s/ By H. Maxwell, Employer

Witness: Signed Viola Daniels.

/s/ Richard C. Lamkin, Employee

Witness: Signed Viola Daniels.

EXHIBIT "C"

Form W-4 (Rev. Nov. 1951) U. S. Treasury Department, Internal Revenue Service.

EMPLOYEE'S WITHHOLDING EXEMPTION
CERTIFICATE

Lamkin, Richard C., 923 Garfield Ave., Loveland,
Colorado. Social Security No. 490-09-2389.

How to Claim Your Withholding Exemptions

1. If Single, and you claim an exemption, write the figure "1"

2. If Married, one exemption is allowed for the husband and one exemption for the wife.

* * * * *

(b) if you claim one of these exemptions,
write the figure "1"..... x1

* * * * *

5. Add the number of exemptions which you have claimed above and write the total..... x1

I Certify that the number of withholding exemptions claimed on this certificate does not exceed the number to which I am entitled.

Date: November 20, 1952.

/s/ Richard C. Lamkin

EXHIBIT "D"

CONTRACT OF EMPLOYMENT

(Hourly Employees - Manual)

Labor Contract No.....

Brown-Pacific Maxon, Contractors on U. S. Navy Contract NOy-13931, hereinafter called the Employer, employs the Employee named upon the following terms and conditions, to which the Employer and the Employee agree:

Name of Employee: Silvia, Anthony B.

Point of Hire: Amesbury, Mass.

Section 1. Assignment of Work:

(a) The position for which the Employee represents he is qualified and for which he is engaged is that of Mechanic, H. E., on Naval construction work at any of the islands or bases west of the 180th Meridian within or immediately adjacent to

the Pacific Ocean Area, hereinafter called the Western Pacific Area.

[Printer's Note: The balance of this Exhibit is a duplicate of Exhibit "A" printed in full at pages 20 to 32 of this printed record, with the following exceptions:]

Section 3. Wages and Hours:

(a) Straight time compensation shall be at the rate of \$1.85 per hour. The Employee is guaranteed the opportunity to work a minimum of forty (40) hours each week, provided he is ready, willing and able to work.

* * * * *

Section 12. Emergency Notification:

(a) In the event of emergency, accident or death, the Employer may notify:

Charles E. Silvia, Son, at 3 Providence St., Springfield, Mass.

* * * * *

Executed at Guam, M. I., in quintuplet, this 1st day of Sept. 1950.

Brown Pacific Maxon, Employer
Signed and Acknowledged in the presence of:

(Signed) R. T. Carlson—As to the Employer.

/s/ Anthony B. Silvia, Employee
Signed and Acknowledged in the presence of:

(Signed) C. G. Gardones—As to the Employee.

[Attached Rider]

Original contract executed on 15 Nov. 1948 at Amesbury, Mass., and which date shall initiate

period of service. Modification of original contract executed on: None.

Initialed:

/s/ R. T. C. for Employer

/s/ Anthony B. Silvia, Employee

EXHIBIT "E"

Form W-4 (Revised October 1948) U. S. Treasury
Department, Internal Revenue Service.

EMPLOYEE'S WITHHOLDING EXEMPTION CERTIFICATE

(Collection of Income Tax at Source on Wages)

9353 Anthony B. Silvia, H-E Mechanic. Social
Security No. SS 018-09-7512.

File this form with your employer; otherwise he is
required by law to withhold tax from your
wages without exemption.

How to Claim Your Withholding Exemptions

1. If you are Single, write the figure "1"..... 1
2. If you are married, one exemption is allow-
ed for the husband and one exemption for
the wife.

* * * * *

(b) If you claim one of these exemptions,
write the figure "1".....[1*]

* * * * *

5. Add the number of exemptions which you
have claimed above and write the total.... 1

I certify that the number of withholding exemp-

* Struck out.

tions claimed on this certificate does not exceed the number to which I am entitled.

Dated: Dec. 15th, 1950.

/s/ Anthony B. Silvia

EXHIBIT "F"

WARRANT FOR DISTRAINT

Richard C. Lamkin No. 52

Date	Debits	Credits	Unpaid Balance
1953			487.51

Date of Notice	Penalty of 5 percent.....	..
	Interest from.....to.....	15.84
	Total	503.35
	Additional Interest
	Total	503.35

Account number and Remarks

Government of Guam, Department of Finance

To: T. E. Fairbanks, Internal Revenue Agent.

Whereas, in pursuance of the provisions of the acts of Congress relating to Income Tax, the above-named person or persons is or are liable to pay the tax or taxes assessed against him or them, in the amount or amounts named above, together with penalties and interest prescribed by law for failure to pay said tax or taxes when the same became due: And Whereas, 10 days have elapsed since notice served and demand made upon said person or persons for payment of said tax or taxes; And Where-

as, said person or persons still neglect or refuse to pay the same: You are hereby commanded to levy upon, by distraint, and to sell so much of the goods, chattels, effects, or other property or rights to property, including stocks, securities, and evidences of debts, of the person or persons liable as aforesaid, or on which a lien exists for the tax or taxes, as may be necessary to satisfy the tax or taxes, with such additional amounts, including interest, as are shown in the statement above, and also such further sum as shall be sufficient for the fees, costs, and expenses of the levy: but if sufficient goods, chattels, or effects are not found, then you are hereby commanded to seize and sell in the manner prescribed by law so much of the real estate of said person or persons; or on which a lien exists for the tax or taxes, as may be necessary for the purposes aforesaid. You will do all things necessary to be done in the premises and strictly comply with all requirements of law, and for so doing this shall be your warrant, of which make due return to me at this office on or before the sixtieth day after the execution hereof.

Dated at Agana, Guam, this 29th day of September, 1954.

/s/ Harry L. Mangerich,
Commissioner of Revenue and
Taxation

LEVY

Government of Guam, Department of Finance

To: Brown-Pacific-Maxon Company, at Station No.
1, Box No. 2, Agana, Guam:

You are hereby notified that there is now due, owing and unpaid from Richard C. Lamkin, Station 1, Apt. B-64, Agana, Guam, to the Government of Guam the sum of Five Hundred Three and 35/100 dollars (\$503.35) as and for an income tax.

You are further notified that all property, rights to property, moneys, credits and/or bank deposits now in your possession and belonging to the aforesaid taxpayer and all sums of money owing from you to the said taxpayer are hereby seized and levied upon for the payment of the aforesaid tax, together with penalties and interest, and demand is hereby made upon you for the amount necessary to satisfy the liability set forth above from the amount now owing from you to the said taxpayer, or for such lesser sum as you may be indebted to him, to be applied in payment of the said tax liability.

Dated at Agana, Guam, this 29th day of September, 1954.

/s/ Harry L. Mangerich,
Commissioner of Revenue and
Taxation

EXHIBIT "G"

WARRANT FOR DISTRAINT

Richard C. Lamkin				No. 128
Date	Debits	Credits	Unpaid	Balance
1953				360.81
Date of Notice	Penalty of 5 percent.....			..
	Interest from....to.....			.41
	Total			361.22
	Additional Interest
	Total			361.22

Account Number and Remarks

Government of Guam, Department of Finance

To: Patrick M. Rice, Internal Revenue Agent:

Whereas, in pursuance of the provisions of the acts of Congress relating to Income Tax, the above-named person or persons is or are liable to pay the tax or taxes assessed against him or them, in the amount or amounts named above, together with penalties and interest prescribed by law for failure to pay said tax or taxes when the same became due: And Whereas, 10 days have elapsed since notice served and demand made upon said person or persons for payment of said tax or taxes; And Whereas, said person or persons still neglect or refuse to pay the same: You are hereby commanded to levy upon, by distraint, and to sell so much of the goods, chattels, effects, or other property or rights to property, including stocks, securities, and evidences of debts, of the person or persons liable as aforesaid, or on which a lien exists for the tax or taxes, as may be necessary to satisfy the tax or taxes, with

such additional amounts, including interest, as are shown in the statement above, and also such further sum as shall be sufficient for the fees, costs, and expenses of the levy; but if sufficient goods, chattels, or effects are not found, then you are hereby commanded to seize and sell in the manner prescribed by law so much of the real estate of said person or persons; or on which a lien exists for the tax or taxes, as may be necessary for the purposes aforesaid. You will do all things necessary to be done in the premises and strictly comply with all requirements of law, and for so doing this shall be your warrant, of which make due return to me at this office on or before the sixtieth day after the execution hereof.

Dated at Agana, Guam, this 6 day of October, 1954.

/s/ Harry L. Mangerich,
Commissioner of Revenue and
Taxation

LEVY

128

Government of Guam, Department of Finance

To: Brown-Pacific-Maxon Company at Station No.
1, Box No. 2, Agana, Guam:

You are hereby notified that there is now due, owing and unpaid from Richard C. Lamkin, Station 1, Apt. B-64, Agana, Guam, to the Government of Guam the sum of Three Hundred Sixty One and 22/100 dollars (\$361.22) as and for an income tax.

You are further notified that all property, rights to property, moneys, credits and/or bank deposits now in your possession and belonging to the aforesaid taxpayer and all sums of money owing from you to the said taxpayer are hereby seized and levied upon for the payment of the aforesaid tax, together with penalties and interest, and demand is hereby made upon you for the amount necessary to satisfy the liability set forth above from the amount now owing from you to the said taxpayer, or for such lesser sum as you may be indebted to him, to be applied in payment of the said tax liability.

Dated at Agana, Guam, this 6 day of October, 1954.

/s/ Harry L. Mangerich,
Commissioner of Revenue and
Taxation

EXHIBIT "H"

LEVY

Government of Guam, Department of Finance

To: Brown Pacific Maxon Company at Station No.
1, Box No. 2, Agana, Guam:

You are hereby notified that there is now due, owing and unpaid from Richard C. Lamkin, Station No. 1, Apt. B-64, Agana, Guam, to the Government of Guam the sum of Two Hundred Fifteen and 93/100 dollars (\$215.93) as and for an income tax.

You are further notified that all property, rights

to property, moneys, credits and/or bank deposits now in your possession and belonging to the aforesaid taxpayer and all sums of money owing from you to the said taxpayer are hereby seized and levied upon for the payment of the aforesaid tax, together with penalties and interest, and demand is hereby made upon you for the amount necessary to satisfy the liability set forth above from the amount now owing from you to the said taxpayer, or for such lesser sum as you may be indebted to him, to be applied in payment of the said tax liability.

Dated at Agana, Guam, this 14th day of October, 1954.

/s/ Harry L. Mangerich,
Commissioner of Revenue and
Taxation

EXHIBIT "I"

LEVY

Government of Guam, Department of Finance

To: Brown Pacific Maxon Company at Station No.
1, Box No. 2, Agana, Guam:

You are hereby notified that there is now due, owing and unpaid from Richard C. Lamkin, Station No. 1, Apt. B-64, Agana, Guam, to the Government of Guam the sum of Two Hundred Fifteen and 93/100 dollars (\$215.93) as and for an income tax.

You are further notified that all property, rights to property, moneys, credits and/or bank deposits

now in your possession and belonging to the aforesaid taxpayer and all sums of money owing from you to the said taxpayer are hereby seized and levied upon for the payment of the aforesaid tax, together with penalties and interest, and demand is hereby made upon you for the amount necessary to satisfy the liability set forth above from the amount now owing from you to the said taxpayer, or for such lesser sum as you may be indebted to him, to be applied in payment of the said tax liability.

Dated at Agana, Guam, this 21st day of October, 1954.

/s/ Harry L. Mangerich,
Commissioner of Revenue and
Taxation

EXHIBIT "J"

WARRANT FOR DISTRAINT

Anthony B. Silvia				No.....
	Date	Debits	Credits	Unpaid Balance
1951	5/14/54	\$213.06	-o-	\$213.06
Date of Notice	Penalty of 5 percent.....			..
	Interest from 3/15/54 to			
	November 10, 1954			8.35
	Total			221.41
	Additional Interest25
	Total			221.66
Account Number and Remarks				

Government of Guam, Department of Finance

To: Patrick M. Rice, Internal Revenue Agent:

Whereas, in pursuance of the provisions of the acts of Congress relating to Income Tax, the above-named person or persons is or are liable to pay the tax or taxes assessed against him or them, in the amount or amounts named above, together with penalties and interest prescribed by law for failure to pay said tax or taxes when the same became due: And Whereas, 10 days have elapsed since notice served and demand made upon said person or persons for payment of said tax or taxes; And Whereas, said person or persons still neglect or refuse to pay the same: You are hereby commanded to levy upon, by distraint, and to sell so much of the goods, chattels, effects, or other property or rights to property, including stocks, securities, and evidences of debts, of the person or persons liable as aforesaid, or on which a lien exists for the tax or taxes, as may be necessary to satisfy the tax or taxes, with such additional amounts, including interest, as are shown in the statement above, and also such further sum as shall be sufficient for the fees, costs, and expenses of the levy; but if sufficient goods, chattels, or effects are not found, then you are hereby commanded to seize and sell in the manner prescribed by law so much of the real estate of said person or persons; or on which a lien exists for the tax or taxes, as may be necessary for the purposes aforesaid. You will do all things necessary to be done in the premises and strictly comply with all require-

ments of law, and for so doing this shall be your warrant, of which make due return to me at this office on or before the sixtieth day after the execution hereof.

Dated at Agana, Guam, this 18th day of November, 1954.

/s/ Harry L. Mangerich,
Commissioner of Revenue and
Taxation

LEVY

Government of Guam, Department of Finance

To: Brown Pacific Maxon Company at Station No.
1, Box No. 2, Agana, Guam:

You are hereby notified that there is now due, owing and unpaid from Anthony B. Silva, Station No. 1, Box 1332, Agana, Guam, to the Government of Guam the sum of Two Hundred Twenty-One and 66/100 dollars (\$221.66) as and for an income tax.

You are further notified that all property, rights to property, moneys, credits and/or bank deposits now in your possession and belonging to the aforesaid taxpayer and all sums of money owing from you to the said taxpayer are hereby seized and levied upon for the payment of the aforesaid tax, together with penalties and interest, and demand is hereby made upon you for the amount necessary to satisfy the liability set forth above from the amount now owing from you to the said taxpayer, or for such lesser sum as you may be indebted to

him, to be applied in payment of the said tax liability.

Dated at Agana, Guam, this 18th day of November, 1954.

/s/ Harry L. Mangerich,
Commissioner of Revenue and
Taxation

EXHIBIT "K"

LEVY

Government of Guam, Department of Finance

To: Brown Pacific Maxon Company at Station No.
1, Box No. 2, Agana, Guam:

You are hereby notified that there is now due, owing and unpaid from Anthony B. Silva, Station No. 1, Box 1332, Agana, Guam, to the Government of Guam the sum of One Hundred Thirty-Two and 31/100 dollars (\$132.31) as and for an income tax.

You are further notified that all property, rights to property, moneys, credits and/or bank deposits now in your possession and belonging to the aforesaid taxpayer and all sums of money owing from you to the said taxpayer are hereby seized and levied upon for the payment of the aforesaid tax, together with penalties and interest, and demand is hereby made upon you for the amount necessary to satisfy the liability set forth above from the amount now owing from you to the said taxpayer, or for such lesser sum as you may be indebted to

him, to be applied in payment of the said tax liability.

Dated at Agana, Guam, this 26th day of November, 1954.

/s/ Harry L. Mangerich,
Commissioner of Revenue and
Taxation

EXHIBIT "L"

LEVY

4th Issue 104

Government of Guam, Department of Finance

To: Brown Pacific Maxon Company at Station No.
1, Box No. 2, Agana, Guam:

You are hereby notified that there is now due, owing and unpaid from Anthony B. Silvia, to the Government of Guam the sum of Forty-Two and 85/100 dollars (\$42.85) as and for an income tax.

You are further notified that all property, rights to property, moneys, credits and/or bank deposits now in your possession and belonging to the aforesaid taxpayer and all sums of money owing from you to the said taxpayer are hereby seized and levied upon for the payment of the aforesaid tax, together with penalties and interest, and demand is hereby made upon you for the amount necessary to satisfy the liability set forth above from the amount now owing from you to the said taxpayer, or for such lesser sum as you may be indebted to

him, to be applied in payment of the said tax liability.

Dated at Agana, Guam, this 2nd day of December, 1954.

/s/ Harry L. Mangerich,
Commissioner of Revenue and
Taxation

[Endorsed]: Filed February 17, 1955.

[Title of District Court and Cause.]

NOTICE OF MOTION

12 (b) (6) F.R.C.P.

To: E. R. Crain and Finton J. Phelan, Jr., Attorneys for Plaintiff:

Please take notice, that the undersigned will bring the attached motion on for hearing before this Court at the Guam Congress Building, Agana, Guam, on the 4th day of March, 1955, at 9:30 o'clock a.m. or as soon thereafter as counsel can be heard.

/s/ H. G. HOMME, JR.,
United States Attorney,
Attorney for Defendant

Acknowledgment of Service attached.

[Endorsed]: Filed February 17, 1955.

[Title of District Court and Cause.]

AMENDED COMPLAINT

Plaintiff Lamkin is a citizen of the State of Colorado and plaintiff Silvia is a citizen of the State of California, both temporarily employed within the unincorporated territory of Guam by defendants. Defendants are joint adventurers engaged in military construction work within the territory of Guam under contract to the military forces of the United States of America. This is a suit of a civil nature and is brought for the purpose of enjoining the defendants from obeying certain orders, directives and levies issued by employees, agents, servants and attorneys of the Government of Guam under claim of right and alleged color of law claimed to exist under the laws of the United States, particularly the Revenue Act of 1939 as Amended, the Revenue Act of 1954, the Organic Act of Guam, Chapter 8A, Title 48, U.S.C.A. and for damages for injuries to plaintiffs by reason of deprivation by defendants of plaintiffs' civil rights in violation of the provisions of Chapter 21, Title 42, U.S.C.A., as hereinafter fully appears.

First Count

Plaintiff Richard C. Lamkin for his claim alleges:

1. That he is employed by defendants pursuant to a contract of employment executed at Denver, State of Colorado on the 17th day of September, 1952, which contract is still in full force and effect.

Pursuant to the terms of said contract defendants employed plaintiff as a machinist general foreman to work on their project in the unincorporated territory of Guam, which contract was modified effective the 26th day of January, 1953 to read that plaintiff was employed as an assistant office engineer at a salary of Six Hundred Seventy Five Dollars (\$675.00) per month, and that plaintiff has fulfilled and performed and continues to fulfill and perform all of his obligations under the terms of said contract.

2. That plaintiff's gross income under said contract is now One Hundred Eighty Four Dollars (\$184.00) per week, from which sum certain authorized deductions are made pursuant to the terms of said contract, leaving plaintiff a net balance of One Hundred Forty Two Dollars Fifty Four Cents (\$142.54) per week, and pursuant to the terms of said contract the net weekly balance of \$142.54 is to be paid to plaintiff each and every week during the continuance of his performance of said contract.

3. That contrary to and in violation of the terms of said contract defendants breached said contract by failing and refusing to pay to plaintiff the net balance of his wages for the weeks ending September 26, 1954, October 3, 1954, October 10, 1954 and October 17, 1954, being a total of Five Hundred Seventy Three Dollars Sixteen Cents (\$573.16); that on the 27th day of October, 1954 plaintiff was paid the sum of Sixty Eight Dollars Ninety Cents (\$68.90) by defendants' check No. 14191 drawn on

the Bank of California National Association of San Francisco, California, leaving a balance of Five Hundred Four Dollars Twenty Six Cents (\$504.26) due and unpaid to plaintiff.

4. That prior to the time the defendants failed to pay to plaintiff his wages as set out above, plaintiff received through the United States mail numerous demands purporting to be assessments of an income tax from one Harry L. Mangerich, claiming to be Commissioner of Revenue and Taxation for the Government of Guam, said demands being for the sum of Four Hundred Eighty Seven Dollars Fifty One Cents (\$487.51) plus interest.

5. That the defendants claim to justify their violation of the terms of their contract with plaintiff by asserting that levies had been made by the said Harry L. Mangerich on behalf of the Government of Guam upon the wages of plaintiff for said income tax alleged to be due to the Government of Guam; that said defendants further claim that the said Harry L. Mangerich asserts as his authority for said levies Sections 3640, 3670, 3690 and 3692, purported to be contained in Chapter 36 of an Internal Revenue Code not otherwise identified; that said defendants state that the said Harry L. Mangerich claims his authority stems from Section 31 of the Organic Act of Guam and that said Section 31 incorporates the Internal Revenue Code of the United States into said Organic Act of Guam; that by the construction of the said Harry L. Mangerich and others, officers of the Government of Guam, have the right to interpret, construe, administer

and enforce said Internal Revenue Code of the United States.

6. That the purported levy by the said Harry L. Mangerich is not authorized by the Revenue Act of 1939 As Amended or the Revenue Act of 1954 of the United States or by any other statute of the United States.

7. That plaintiff is not indebted to the Government of Guam and did not and has not authorized defendants to pay any sums of money to the said Harry L. Mangerich or the Government of Guam on his behalf; that defendants are indebted to plaintiff in the sum of Five Hundred Four Dollars Twenty Six Cents (\$504.26), which sum defendants refuse to pay by reason of said purported assessment and levy.

Second Count

Plaintiff Anthony B. Silvia for his claim alleges:

1. That he is employed by defendants pursuant to a contract of employment executed at Amesbury, State of Massachusetts, on the 15th day of November, 1948, which contract is still in full force and effect. Pursuant to the terms of said contract defendants employed plaintiff in a supervisory capacity to work on their project in the unincorporated territory of Guam and that plaintiff has fulfilled and performed and continues to fulfill and perform all of his obligations under the terms of said contract.

2. That plaintiff's gross income under said contract is One Hundred Forty Six Dollars Sixty Five Cents (\$146.65) per week, from which sum certain

authorized deductions are made pursuant to the terms of said contract, leaving plaintiff a net balance of One Hundred Nine Dollars Sixty Five Cents (\$109.65) per week, and pursuant to the terms of said contract the net weekly balance of One Hundred Nine Dollars Sixty Five Cents (\$109.65) is to be paid to plaintiff each and every week during the continuance of his performance of said contract.

3. That plaintiff is informed and believes and therefore alleges the fact to be that defendants will, on the 3rd day of November, 1954, in violation of the terms and provisions of said contract of employment, confiscate the sum of One Hundred Nine Dollars Sixty Five Cents (\$109.65), being the net balance due to plaintiff after deductions from his wages for the preceding week, and further, that defendants will, on the 10th day of November, 1954, confiscate the sum of One Hundred Nine Dollars Sixty Five Cents (\$109.65), and further, that on the 17th day of November, 1954, an undetermined sum will be confiscated from the wages of plaintiff by defendants.

4. That plaintiff is informed and believes and therefore alleges the fact to be that the defendants intend to pay such sums so confiscated from his wages to one Harry L. Mangerich, an employee of the Government of Guam, by reason of purported assessments and levies made by the said Harry L. Mangerich and served upon defendants.

5. That plaintiff is not indebted to the Govern-

ment of Guam or the said Harry L. Mangerich or to the defendants herein in any amount.

6. That plaintiff has no adequate remedy at law to prevent the total confiscation and dissipation of his wages as set forth above.

7. That unless the defendants are restrained and enjoined from performing the acts of confiscation hereinabove described, plaintiff will be deprived of the fruits of his labor without due process of law.

Third Count

Plaintiffs Richard C. Lamkin and Anthony B. Silvia, on behalf of themselves and others similarly situated, for a further claim allege:

1. That defendants have, since the 1st day of January, 1951 to the present time withheld various sums of money from the wages of plaintiffs and other employees of defendants; and further, upon information and belief plaintiffs allege the fact to be that defendants will withhold such sums in the future, said withholding being in accordance with the withholding tables provided in Section 1622 (a)-(d), (g)-(k) of the United States Revenue Act of 1939 As Amended and Section 3402 of the United States Revenue Act of 1954, said withholding not having been authorized by plaintiffs except for taxes to be withheld and paid to the United States of America.

2. That said withholding hereinabove described was and is contrary to the provisions of Section 1621 of the United States Revenue Act of 1939 As

Amended and Section 3401 of the United States Revenue Act of 1954.

3. That said Sections 1621 and 3401 as above described cannot be construed to authorize withholding from employees of defendants within a possession of the United States.

4. That by reason of the wrongful acts of defendants herein set out, plaintiffs and others have had substantial sums of money unlawfully withheld from their wages and that in the future, further substantial and undetermined sums will continue to be withheld from their wages contrary to the express provisions of the statutes herein set out.

5. That due to the numerous employees of defendants herein who have been subjected to the wrongful and illegal withholding hereinabove described, a multiplicity of suits to protect and secure their rights would be required and that therefore plaintiffs herein and others have no adequate remedy at law.

Fourth Count

Plaintiffs Richard C. Lamkin and Anthony B. Silvia, for themselves and others similarly situated, for a fourth count allege:

1. Reallege all of the allegations of the first and third counts of this complaint as though set forth herein in full.

2. That defendants, conspiring with one Harry L. Mangerich, who claims to be a duly appointed Commissioner of Revenue and Taxation of the unincorporated territory of Guam, and other officials of the Government of Guam unknown to plaintiffs,

did wilfully deprive plaintiffs and others of a civil right guaranteed to them by the Constitution and laws of the United States of America and the Organic Act of Guam, to wit: their property has been confiscated without due process of law contrary to the express provisions of Title 26, U.S.C.A.; that defendants, acting in concert with the said Harry L. Mangerich and others, under color of statutory law and regulations of the United States of America and the unincorporated territory of Guam, did deprive plaintiffs and others of their property and right to property as hereinbefore alleged, to the damage of each plaintiff in the sum of Twenty Five Thousand Dollars (\$25,000.00).

Wherefore, plaintiff Richard C. Lamkin demands:

1. Judgment against defendants for Five Hundred Four Dollars Twenty Six Cents (\$504.26), together with interest at the rate of 6% per annum from the 26th day of September, 1954.

2. That defendants be restrained and enjoined from further confiscation of plaintiff's wages.

3. That defendants be restrained and enjoined from further withholding from the wages of plaintiff and others, and that said defendants be required to account for and repay to plaintiff and others such sums withheld from their wages since the 1st day of January, 1951.

4. Judgment for Twenty Five Thousand Dollars (\$25,000.00).

5. Such other and further relief as to the Court may seem proper.

Plaintiff Anthony B. Silvia demands:

1. That defendants be restrained and enjoined from confiscating his wages as threatened.

2. That defendants be restrained and enjoined from further withholding from the wages of plaintiff and others, and that said defendants be required to account for and repay to plaintiff and others such sums withheld from their wages since the 1st day of January, 1951.

3. Judgment for Twenty Five Thousand Dollars (\$25,000.00).

4. Such other and further relief as to the Court may seem proper.

Dated this 3rd day of March, 1955.

/s/ FINTON J. PHELAN, JR.,

/s/ E. R. CRAIN,

Attorney for Plaintiffs

[Endorsed]: Filed March 3, 1955.

In the District Court of Guam for the Territory
of Guam

Civil No. 65-54

RICHARD C. LAMKIN, et al., Plaintiffs,

vs.

BROWN AND ROOT, INC., et al., Defendants.

SUMMARY JUDGMENT

F.R.C.P. 56 (c)

The motion of the defendants for summary judgment pursuant to Rule 56 (c) of the Rules of Civil Procedure, having been presented and the Court being duly advised,

The Court finds that the defendants are entitled to a summary judgment as a matter of law.

It is therefore ordered, adjudged and decreed that the defendants' motion for summary judgment be, and the same hereby is granted, that the plaintiffs' have and recover nothing by their suit.

Dated this 15 day of March, 1955.

/s/ PAUL D. SHRIVER,

Judge of the District Court

Approved as to form:

/s/ E. R. CRAIN,

/s/ FINTON J. PHELAN, JR.,

Attorneys for Plaintiffs

[Endorsed]: Filed March 15, 1955.

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

We, the undersigned, jointly and severally acknowledge that we and our personal representatives are bound to pay to Brown and Root, Inc., Pacific Bridge Company, Inc., Maxon Construction Company, Inc., Utah Construction Company, Inc., and Swinnerton and Wallberg, a co-partnership, Joint Adventurers Doing Business Under the Name of Brown Pacific Maxon, defendants, the sum of Two Hundred Fifty Dollars (\$250.00).

The condition of this bond is that, whereas the plaintiffs have appealed to the Court of Appeals for the Ninth Circuit by notice of appeal filed 13th day of April, 1955, from the order of the District Court of Guam dismissing the complaint herein filed, entered in this action on the 15th day of March, 1955, if the plaintiffs shall pay all costs adjudged against them if the appeal is dismissed or the judgment and order affirmed or such costs as the appellate court may award if the judgment and order is modified, then this bond is to be void, but if the plaintiffs fail to perform this condition, payment of the amount of this bond shall be due forthwith.

/s/ HELENA J. PHELAN

/s/ ELDER C. CRAIN,

Signed and acknowledged before me this 13th day of April, 1955.

[Seal] /s/ ENRIQUE R. MESA,
Notary Public in and for the unincorporated territory of Guam.

[Endorsed]: Filed April 13, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Richard C. Lamkin and Anthony B. Silvia, the plaintiffs herein hereby appeal to the United States Court of Appeals for the Ninth Circuit from the order of the District Court of Guam dismissing the complaint herein filed, entered in this action on the 15th day of March, 1955.

Dated at Agana, unincorporated territory of Guam, this 13th day of April, 1955.

/s/ FINTON J. PHELAN, JR.,
/s/ E. R. CRAIN,
Attorneys for Plaintiffs

[Endorsed]: Filed April 13, 1955.

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL

Plaintiffs herewith present the points upon which they claim the Court erred.

1. In disregarding the amended complaint filed on the 3rd day of March, 1955 and after said amended complaint was filed and served in holding a hearing upon the original complaint and the motions directed at said original complaint.

2. In entering summary judgment for the defendants upon the complaint which had been superseded by an amended complaint.

3. In entering summary judgment.

4. In finding and holding that the defendants were entitled to a judgment as a matter of law and that there existed no material issues of fact unresolved.

5. In disregarding the clear admission of J. Russell Marshall in his affidavit enumerating the illegal acts being performed by defendants.

6. In disregarding the allegations of the complaint and the admissions of defendants and entering summary judgment contrary to law and the provisions of the Federal Rules of Civil Procedure.

7. In considering matters not before the Court and which the Court cannot have judicial notice of.

8. In disregarding the admitted breach of contract by defendants.

9. In misconstruing the applicable statutes of the United States.

10. In refusing to acknowledge the fact that withholding within Guam is contrary to the statute, a fact admitted by defendants.

11. In refusing to acknowledge the fact that employees of the Government of Guam under color of their office and under the claim of statutory authority are violating the statutes of the United States and with the threats of their powers are coercing defendants into converting vast sums of monies from plaintiffs and many others, contrary to law.

12. In failing to recognize the illegal confiscation of portions of the salaries of plaintiffs without warrant in law.

13. The Court clearly displayed its bias against plaintiffs and that it had prejudged the case.

14. In precluding plaintiffs from demonstrating by competent evidence the merits of their claim.

Dated at Agana, Guam, this 17th day of May, 1955.

/s/ FINTON J. PHELAN, JR.,

/s/ E. R. CRAIN,

Attorneys for Plaintiffs

[Endorsed]: Filed May 19, 1955.

[Title of District Court and Cause.]

MINUTES

1955

2-17 (1) Motion to Dismiss and (2) Motion for Summary Judgment having been filed this day, Ordered hearing on said motions be had on Friday, March 4, 1955, at 9:30 a.m.

3- 4 Hearing:

Plaintiffs appear by E. R. Crain and Finton J. Phelan, Jr., their attorneys.

Defendants appear by H. G. Homme, Jr., U. S. Attorney.

Court rules that Amended Complaint adds nothing to the original complaint upon which relief can be granted and that the addition of the 4th Count has nothing to do with the basic issues.

Therefore, court hears the arguments of the attorneys on the Motion for Summary Judgment. Motion granted and the attorney for the defendants is directed to prepare a judgment for the record and file the same with the court within 10 days.

DOCKET ENTRIES

1954

10-28 1. Filed Complaint. Issued summons and two copies of Complaint to U. S. Marshal.

10-30 2. Filed Order of appointment of Charles Owen as special process server.

11- 1 3. Filed summons returned served Oct. 30.

1954

- 11-19 4. Filed stip. extending time to answer, move or otherwise plead to Jan. 19.

1955

- 1-19 5. Filed stip to extend time to plead to Feb. 18.

- 2-17 6. Filed Motion to Diss and (2) Motion for Summary Judgt.

- 2-17 7. Filed Notice of Mtn—Hearing March 4, 9:30.

- 2-17 8. Filed receipt of service of Motion by atty for pltf.

- 3- 3 9. Filed Amended Complaint.

HNG: Attys present. Arguments of attys had. Ct. rules that Amend Complnt adds nothing to original complnt on which relief can be granted. Ct grants mtn for Summ Judgt and directs atty for defts to prepare Judgt and file same with the Ct.

- 3-15 10. Filed Summary Judgt in favor of defts.

- 3-22 11. Filed copy of ltr of transm of copy of Summ Judgt to attys.

- 4-13 12. Fld Bond for Costs on Appl.

- 4-13 13. Fld Notice of Appl.

- 4-16 14. Fld copy of clk's ltr advsng defts' atty re Notice of Appl.

- 5-19 15. Fld Statement of Points on Appeal.

- 5-19 16. Fld. Reporter's Transcript of proceedings.

- 5-19 17. Fld Designation of Contents of Record on Appeal.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Roland A. Gillette, Clerk of the District Court of Guam for the Territory of Guam, M. I., do hereby certify that the following documents, to wit:

1. Complaint, filed October 28, 1954.
2. Stipulation of counsel, filed November 19, 1954.
3. Stipulation of counsel, filed January 19, 1955.
4. Motion to dismiss and for summary judgment and supporting affidavits of J. Russell Marshall, together with Exhibits A, B, C, D, E, F, G, H, I, J, K, and L thereto, filed February 17, 1955.
5. Notice of Motion, filed February 17, 1955.
6. Amended Complaint, filed March 3, 1955.
7. Summary Judgment, filed March 15, 1955.
8. Bond for costs on appeal, filed April 13, 1955.
9. Notice of Appeal, filed April 13, 1955.
10. Statement of Points on Appeal, filed May 19, 1955.
11. Transcript of proceedings, filed May 19, 1955.
12. Designation of contents of record on appeal, filed May 19, 1955.
13. Minutes and Docket entries,—are the original documents filed in the office of the Clerk of the District Court of Guam in the above entitled case.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of the aforesaid court at Agana, Guam, M. I., this 19th day of May, A.D., 1955.

[Seal]

/s/ ROLAND A. GILLETTE

[Title of District Court and Cause.]

TRANSCRIPT OF PROCEEDINGS

March 4, 1955, Agana, Guam

Before: The Honorable Paul D. Shriver, Judge.

Appearances: For the Plaintiffs: E. R. Crain and Finton J. Phelan, Jr., Attorneys at Law, Agana, Guam. For the Defendants: H. G. Homme, Jr., United States Attorney, Agana, Guam.

Friday, March 4, 1955, 9:30 a.m.

The Court: First order of business?

The Clerk: We have the matter of Richard C. Lamkin, et al, vs. Brown and Root, Inc. et al.

The Court: What is our situation now? There has been an amended complaint filed?

Mr. Homme: That is right, your Honor.

The Court: What changes were made in your amended complaint?

Mr. Crain: There was a fourth count added and certain changes made in the other counts.

The Court: It seems to me the issues are in no way changed by your amended complaint. You contend that the employer has no right or authority to honor a distraint by the Government of Guam. We have the motion for summary judgment where the employers do consider themselves bound and have simply complied with the order of the Government of Guam. Now is there any issue except whether or not the Government of Guam has that authority?

Mr. Phelan: Yes, we raise the issue of withholding. Title 26 says you do not withhold within a

possession unless you are an employee of the United States.

The Court: It doesn't say the Government of Guam cannot require——

Mr. Crain: If you read Section 1621 and apply the mirror application to that, it does.

The Court: Well, your issue is simply whether or not Section 31 of the Organic Act of Guam gives the local collector the authority to require withholding and to distraint for the non-payment of tax deficiencies. It is impossible to escape the conclusion that if the government has to live from its revenue, if the United States Congress, as a legislative body, has spoken, and if the courts have held that the tax is levied and is to be collected by the local officials of the Government of Guam, how can an employer be placed in a position of not complying? Certainly the individual taxpayer if he has done everything that he is required to do is entitled to relief but nowhere do you contend here that the individual taxpayer is not obligated to pay, do you?

Mr. Phelan: The Government of Guam is not a party to this action; we don't have to.

The Court: But the employer has set up by affidavit his defense and that has not been countered by any affidavit.

Mr. Phelan: We have an amended complaint in there which, under the rules, I believe we have a right to file.

The Court: Yes, you have a right under the rules, of course, but not necessarily after the matter is at issue.

Mr. Phelan: If it please the court, how long is a matter at issue without an answer?

The Court: There is the motion for summary judgment.

Mr. Phelan: That is not in answer to the pleadings.

The Court: Now the motion for summary judgment is to enable the court to pass upon the questions raised in a complaint where there is no material fact which remains in dispute. Now your position is solely one of law.

Mr. Phelan: If it please the court, how can a ruling be made on a complaint which has now been superseded by an amended complaint and there is no motion to that amended complaint?

The Court: Well, I am simply exploring the question as to whether your amended complaint raises anything which is not answered by the summary judgment. That is the question I asked you and you said you added a fourth count, conspiracy, which in my view does not change the situation one iota. You have a question of law. Certainly the collector and employer and so forth cannot be guilty of violating a person's civil rights if all they are doing is following the law enacted by the Congress of the United States. It is quite futile to pretend otherwise. Either the law is valid or it isn't valid. So in considering this this morning I am considering whether or not your amended complaint presents any question to which the employer is required to move, or whether the motion for summary judgment covers that as well as the other allega-

tions. This is simply the same old contention in different dress—that the Government of Guam has no authority under Section 31 to require people whose income is earned in Guam to pay an income tax on that income and give it to the collector or the authority to distraint in those instances when the employee does not pay voluntarily and as a corollary of the imposition of the tax that the employer must withhold on the same basis as though the employee were being employed in the continental United States. Now what injustice are we dealing with here? What are we talking about that is wrong, that is injurious, that is unjust to the employee?

Mr. Phelan: The whole history of these distraints down at BPM violate the statutes. They have never attempted to follow the statute in any way. We have never in any of these cases succeeded in getting the facts before this court. There has never been a trial on the issues.

The Court: I don't think you have ever raised those issues.

Mr. Phelan: I don't know.

The Court: You have always raised the questions of law coupled with some general statement.

Mr. Phelan: Under the federal rules, if it please the court, we have gotten away from the preciseness and minute details of the common law in the older pleadings.

The Court: That is correct but you are still bound by the federal rules which say you must

allege facts upon which relief can be granted. What relief do you expect the court to grant here?

Mr. Phelan: I want BPM to stop withholding from my client money that is owed to the United States in tax.

The Court: In other words, you want to reach the question as to whether or not your client owed the tax?

Mr. Phelan: The question is has BPM any right to withhold the tax.

The Court: But the ultimate question is whether your client owed the tax. It is all part of the general pattern. Now if it is your contention that the collector is attempting to obtain from your client something to which the collector isn't entitled monetarywise then certainly you are entitled to relief in court most assuredly, but what relief can this court give you if the employer is merely doing what it is obligated to do by law? Granted that it may be onerous on the employer but that isn't the employee's responsibility or his privilege to say "You are embarrassing my employer by an undue number of distraints" and so forth. Possibly the employer can complain but not the employee. It seems to me the employee has to come into this court and say "Somebody is trying to take my property without due process of law, without giving me an opportunity to be heard."

Mr. Phelan: I think we said that.

The Court: And if that is true, his quarrel is with the collector. The collector has the authority. That is always true, gentlemen, in any system of

tax collection. Of necessity the government has to place the burden on the taxpayer to demonstrate that a collection is improper, and under our system of income tax it has been held repeatedly the taxpayer ordinarily must pay and then sue to recover.

Mr. Crain: If the court please, the collector has not shown that authority to BPM because BPM hasn't alleged it in the affidavit which has been filed with this motion. BPM say on information and belief they think they are paying this money to the proper party and that isn't sufficient in the affidavit to support the motion.

The Court: The court has told them that they are paying it to the proper party.

Mr. Phelan: Told BPM?

The Court: The Court of Appeals has told it referentially.

Mr. Phelan: In this case but it is not *res judicata* in any case except the Laguana.

The Court: It certainly is *res judicata* in that in principle this is a proper tax to be paid to the proper officials of the local government.

Mr. Phelan: Not as I read the opinion, your Honor.

The Court: That is precisely the question that was presented. I don't see how it is going to assist the court or the parties or anything else in this case to continue the case because the plaintiffs at the last moment have filed an amended complaint.

Mr. Crain: If the court please, the government waited four months to answer this complaint. I

don't think it only should be put on us that we are negligent.

The Court: During those four months you had four months for amendment.

Mr. Crain: Why is the burden put upon us to be prompt alone?

The Court: Well, it isn't entirely but what does it profit to have the defendant again answer your fourth cause of action and again move if everything that the defendant contends is now before the court?

Mr. Crain: I don't think the defendant has contended that, if your Honor please. In fact counsel for the defendant has indicated he desires to forward this complaint to the Department of Justice for instructions. I don't see why conclusions should be drawn that aren't before the court.

The Court: What conclusions are you referring to?

Mr. Crain: The conclusion that the defendant will merely refile his motions as they stand now.

The Court: Well, I will hear from the government. What do you want?

Mr. Homme: The government will stand on its present motion to dismiss, at least as it relates to the three counts alleged in the original complaint to which the motion is directed, the present motion to dismiss and the present motion for summary judgment. However, if the plaintiffs would insist that their amended complaint, which they file as a matter of right, defeats the motion at this time, the government would make no objection to orally

amending its initial motion to dismiss and its motion for summary judgment to include the amended complaint and let the matter come up before the court at some subsequent time for this reason: Count No. 4 charges a series of offenses against the defendants or cost-plus-fixed-fee government contractor. At the present time the United States represents the defendants directly as a cost-plus-fixed-fee contractor. However, the inferences of Count No. 4, because of its seriousness, I feel, should possibly be called to the attention of the United States in order that they may consider a direct intervention. I am afraid that if we were to—counsel for the defense has no further statement.

The Court: The court holds in this case that the fourth count of the amended complaint, the only respect in which the original complaint was changed, and to which the motion for dismissal and summary judgment was directed, fails to state facts or circumstances upon which the court could grant relief; that there is nothing more than a bombastic and unsupported series of generalizations. The court therefore directs its attention to the motion for summary judgment, bearing fully in mind that a motion for summary judgment assumes the fact that there are no issues of fact that remain in the controversy and upon which the court must pass. The original complaint and the amended complaint represent nothing more than a continuance on the part of some delinquent taxpayers to defeat the Congressional purpose of Section 31 of the Organic Act of Guam. Regardless of any initial confusion

as to the application of that provision, the determination of the courts is that the effect of Section 31 is to impose a territorial tax measured by the tax which the same individual would have to pay in the continental United States; that of necessity the Congress does not levy taxes unless it expects them to be collected, but in using the phrase "income tax laws" it meant to do more than to levy a tax; that it intended to vest in the proper collection officials those machineries for collection which are essential to the obtaining of tax funds; that it has been the policy of the United States government for many years to impose the pay-as-you-go plan of income tax collection and as part of that collection method, it has required employers to withhold taxes and in turn has protected employers who withheld and paid taxes to the proper officials by denying the courts any right to interfere with them and requiring the aggrieved taxpayer to follow the administrative procedures. That is what has been done in Guam. This employer is possibly the largest single employer outside of the United States of America in the island of Guam. It is trying to comply with the law. There is no showing here that the taxpayer has in any way been injured except that he is denied the assistance of the court in evading his tax responsibility. Nothing more. If he is not evading his tax responsibility then his remedy is against the collector who has received the withheld taxes. This complaint is again typical of an almost impertinent type of pleading in which the pleader again infers that the tax col-

lector is some kind of imposter, some person who alleges that he holds the position; attempting to surround the pleading with an impression that we are dealing here with a number of false public officials, people who pretend to act, people who pretend to do this. In conclusion the court finds that the addition at the last moment of the fourth count in the amended complaint adds nothing to the basic issues and it is insufficient to raise any question under the civil rights statute of the United States; that the defendant's motion for summary judgment is valid. The court therefore grants the motion for summary judgment and directs the defendant to prepare a judgment for the record and have it filed in this case.

[Endorsed]: Filed May 19, 1955.

[Endorsed]: No. 14772. United States Court of Appeals for the Ninth Circuit. Richard C. Lamkin and Anthony B. Silvia, Appellants, vs. Brown and Root, Inc., Pacific Bridge Company, Inc., Maxon Construction Company, Inc., Utah Construction Company, Inc., and Swinnerton and Wallberg, a co-partnership, Joint Adventurers doing business under the name of Brown, Pacific Maxon, Appellees. Transcript of Record. Appeal from the District Court of Guam, Territory of Guam.

Filed: May 23, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14772

RICHARD C. LAMKIN, et al., Appellants,

vs.

BROWN AND ROOT, INC., et al., Appellees.

STATEMENT OF POINTS ON APPEAL

The points upon which Appellants will rely on appeal are:

The Court erred in the following particulars:

1. In holding that no genuine issue of a material fact remained.
2. In entering summary judgment for appellees.
3. In entering judgment in favor of appellees upon insufficient affidavit and contrary to the admissions made by the appellees.
4. In taking judicial notice of facts not properly before the Court and basing the judgment of the Court upon such facts.
5. In accepting the affidavit in support of appellees' motion as proof of the facts therein contained.
6. In holding and entering summary judgment based upon holdings contrary to the provisions of the United States statutes.
7. In entering summary judgment upon the complaint, which was not before the court.
8. In entering summary judgment based upon the Court's pre-judging of the case.

9. Misconstruing the pertinent statutes of the United States.

Dated at Agana, unincorporated territory of Guam, this 27th day of June, 1955.

/s/ FINTON J. PHELAN, JR.,
/s/ FINTON J. PHELAN, JR.,
For E. R. Crain,
Attorney for Appellants

[Endorsed]: Filed Jun. 29. 1955. Paul P. O'Brien,
Clerk.

[Title of U. S. Court of Appeals and Cause.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

Pursuant to Rule 75 (a) of the Federal Rules of Civil Procedure, the plaintiffs-appellants hereby designate for inclusion in the record on appeal to the United States Court of Appeals for the Ninth Circuit, taken by notice of appeal filed April 13, 1955, the following portions of the record, proceedings, and evidence in this action:

1. The complaint.
2. The amended complaint.
3. Stipulation of counsel of November 19, 1954.
4. Notice of motion, motion to dismiss and for summary judgment and supporting affidavit of J. Russell Marshall, together with Exhibits A, B, C, D, E, F, G, H, I, J, K, and L thereto, filed February 17, 1954.

5. Summary judgment dated March 15, 1955.
6. Reporter's transcript of proceedings of March 4, 1955.
7. Plaintiffs' notice of appeal and bond.
8. Plaintiffs' statement of points upon appeal.
9. The clerk's docket entries.
10. The clerk's minute entries.
11. The journal entries.
12. All other documents and exhibits in this file.
13. This designation.

Dated at Agana, unincorporated territory of Guam, this 27th day of June, 1955.

/s/ FINTON J. PHELAN, JR.,

/s/ FINTON J. PHELAN, JR.,

For E. R. Crain,

Attorneys for Appellants

[Endorsed]: Filed Jun. 29, 1955. Paul P. O'Brien,
Clerk.

